

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CA 04-33 E

JULIO PEREZ,

Petitioner,

vs.

WARDEN, FCI McKEAN,

Respondent.

Civil Action No.

Judge McLaughlin

Magistrate Judge

U.S. DISTRICT COURT

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FILED

MOTION FOR RELIEF FROM JUDGMENT, FED.CIV.P. RULE 60(b)

NOW COMES, the Petitioner, Julio Perez, and appearing pro se, hereby moves this Court to grant relief due to misrepresentation by the adverse party.

Pursuant to Fed.Civ.P. Rule 60(b)(3), this Court, in its discretion, may grant a motion for relief from a final judgment based on misrepresentation by an adverse party where (1) the moving party possessed a meritorious claim, (2) the adverse party engaged in misrepresentation, and (3) the adverse party's conduct prevented the moving party from fully and fairly presenting its case during trial. see e.g., Cowan v. Stafford R-VI Sch. Dist., 140 F.3d 1153, 1159 (8th Cir. 1998) (describing elements); see also Abrahamsen v. Trans-State Exp., Inc., 92 F.3d 425, 428 (6th Cir. 1996); Diaz v. Methodist Hosp., 46 F.3d 492, 496 (5th Cir. 1995); Harre v. A.H. Robins, Co., 750 F.2d 1501, 1503 (11th Cir. 1989); vacated in part, 866 F.2d 1303 (11th Cir. 1989)(remanding for new trial upon demonstration that defense expert witness may have committed perjury); Assmann v. Fleming, 159 F.2d 332 (8th Cir. 1947)(noting possibility of relief, irrespective of whether the fraud is considered "extrinsic" or "intrinsic").

In this case, Petitioner challenges an incident report, and DHO sanctions which include, but are not limited to, loss of Good Conduct Time, for an alleged positive urinary analysis (UA). Petitioner's UA tested a false positive for THC/Metabolite (Cannabis).

Petitioner appealed the DHO sanctions through the appropriate administrative remedies arguing that his prescribed medication Efavirenz (Sustiva, Stocrin) give false positives for THC/Metabolites. This contention was denied by BOP medical personnel and contested by the Respondent. This Court agreed with the Respondent and denied the Petition. Petitioner appealed and it was affirmed by the Third Circuit.

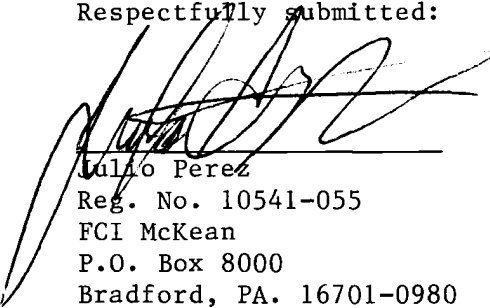
Petitioner now has proof that these prescription drugs (Efavirenz (Sustiva, Stocrin)) provide false positives. see attached documentation on Efavirenz, 13 pages. pages 3, and page 1 of 3.

Based on the above, and the material misrepresentations given by the Respondents. Petitioner respectfully moves this Court to grant this motion as moved and reopen the proceedings herein.

WHEREFORE, facts and premises considered, the petitioner prays that this Court grant this motion as moved.

Dated: february 13, 2006

Respectfully submitted:

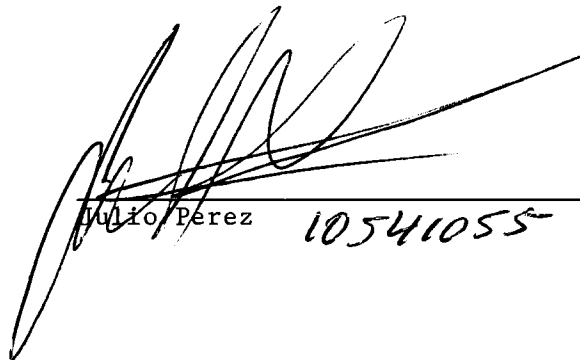


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CERTIFICATE OF SERVICE

I do hereby certify that on this the 13 day of February, 2006, I placed in the U.S. Mail, first-class postage prepaid, a true and correct copy of the foregoing pleading for delivery to:

Christy C. Wiegand
Assistant U.S. Attorney
U.S. Courthouse & Post Office
700 Grant Street, Suite 4000
Pittsburgh PA 15219



Julio Perez 10541055